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PASS: EB FOR BOEKER, L FOR FELDMAN, TREASURY FOR LANGE,
CIEP FOR GRANFIELD, JUSTICE FOR DAVIDOW, COMMERCE
FOR ARRILL

E.O.11652: N/A

TAGS: EINV, EFIN, OECD

SUBJECT: COMMITTEE ON INTERNATIONAL INVESTMENT AND
MULTINATIONAL ENTERPRISES, MEETING SEPTEMBER 30-
OCTOBER 1; AD HOC DRAFTING GROUP MEETING
OCTOBER 2-3

REFS: (A) IME(75)15

(B) IME(75)12

(C) IME(75)17

(D) IME(75)9

1. SUMMARY. THE OECD/IME COMMITTEE MADE SUBSTANTIAL
PROGRESS TOWARD A PACKAGE OF (A) OECD INVESTMENT GUIDE-
LINES ON CONDUCT OF MULTINATIONAL ENTERPRISES (MNE'S),
(B) NATIONAL TREATMENT FOR FOREIGN INVESTORS FROM THE
OECD AREA, AND (C) CONSULTATION ON INVESTMENT INCEN-
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TIVES AND DISINCENTIVES. ON THE MNE GUIDELINES, U.S.

DEL (BOEKER) REACHED A COMPROMISE WITH THE EC COUNTRIES ON MANY OF THE MAJOR OUTSTANDING ISSUES. ELEMENTS OF THIS COMPROMISE ARE: TAKING INTRODUCTION AS IS, EXCEPT FOR SOME STRENGTHENING OF STATEMENT ON NON-DISCRIMINATION BETWEEN MNC'S AND DOMESTIC FIRMS, AND IMPROVED STATEMENT OF POLITICAL PURPOSE OF GUIDELINES (PARA 6 OF REF A), PROGRESS TOWARDS ELIMINATION OF COUNTRY-BY-COUNTRY BREAKDOWN OF FINANCIAL INFORMATION MNE'S ARE ASKED TO DISCLOSE; BROADENING OF GENERAL INTER-GOVERNMENTAL CONSULTATION PROCESS BUT DROPPING COMPLAINT PROCEDURE ON SPECIFIC FIRMS. SWEDES ARE STILL RESISTING SOME ELEMENTS OF THIS COMPROMISE AS WELL AS RECOGNITION OF GOVERNMENTS' "DUTY" TO TREAT MNE'S EQUITABLY. BUT THEY NOW APPEAR ISOLATED ON THESE POINTS. AGREEMENT WAS REACHED ON THE GUIDELINE FOR CONSULTATION ON INVESTMENT INCENTIVES AND DISINCENTIVES, AS PROPOSED BY THE U.S. THE MAJOR TRADE YET TO BE MADE IS EUROPEAN'S ACCEPTANCE OF A MEANINGFUL CONSTRAINT ON DEROGATIONS FROM NATIONAL TREATMENT COMMITMENT IN RETURN FOR U.S. ACCEPTANCE OF THE MNE GUIDELINES. INFORMAL SOUNDINGS INDICATE THAT CANADIANS AND AUSTRALIANS WILL BE UNWILLING TO SUBSCRIBE TO NATIONAL TREATMENT PART OF THE PACKAGE. CHAIRMAN AND U.S. ARGUED THAT COUNCIL'S DEADLINE OF DECEMBER 31 FOR COMPLETION OF PACKAGE SHOULD BE POSTPONED UNTIL SPRING OF 1976; THIS WILL ALMOST CERTAINLY BE DONE. AD REFERENDUM FULL AGREEMENT WAS REACHED ON LANGUAGE TO BE INCLUDED IN GENERAL POLICIES SECTION ON BRIBERY, POLITICAL CONTRIBUTIONS AND POLITICAL ACTIVITIES. NEW SECRETARIAT TEXT OF GUIDELINES, ALONG WITH COVER LETTER GIVING STATE OF PLAY, WILL BE FORWARDED TO BIAC AND TUAC. NEXT MEETING OF IME PLENARY IS SCHEDULED FOR NOVEMBER 19 AND 20. ON NOVEMBER 18, AFTERNOON, IME BUREAU (CHAIRMAN, OECD SECRETARIAT) AND INTERESTED DELEGATIONS (INCLUDING U.S.) WILL MEET SEPARATELY WITH REPRESENTATIVES OF BIAC AND TUAC TO HEAR THEIR VIEWS ON GUIDELINES. ANOTHER IME PLENARY IS SCHEDULED FOR DECEMBER 17 AND 18. AD HOC DRAFTING GROUP WILL MEET NEXT ON OCTOBER 29 AND 30. END SUMMARY.

2. PREAMBLE: MEETING OF IME COMMITTEE OPENED WITH LIMITED OFFICIAL USE

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CHAIRMAN STEEG ATTEMPTING TO GET CONSENSUS OF DELEGATIONS THAT PREAMBLE CONTAINED IN REFDOC A WAS GENERALLY SATISFACTORY, WITH ONLY MINOR DRAFTING MODIFICATIONS NEEDED TO COMPLETE IT. IN COURSE OF IME SESSION SEVERAL RELATIVELY MINOR CHANGES WERE SUGGESTED, WITH ONE MAJOR PROBLEM DEVELOPING -- THE SWEDES REFUSED TO ACCEPT THE "BRIDGE" PARAGRAPH, BEGINNING WITH "HAVING REGARD" AT END OF PREAMBLE.

3. AMONG MINOR ITEMS RAISED WERE FOLLOWING: (A) NORWAY, SUPPORTED BY SWEDEN AND NETHERLANDS, BELIEVED THAT IN PARA 6 OF PREAMBLE, THE WORD "TRY" SHOULD BE DELETED, RESULT BEING THAT "MNE'S SHOULD FOLLOW THE GUIDELINES." NORWAY ALSO WISHED "VOLUNTARY" DELETED FROM PARA 7, AS SAYING THAT GUIDELINES NOT LEGALLY ENFORCEABLE WAS ENOUGH. U.S. DEL NOTED OUR POSITION ON VOLUNTARINESS OF

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GUIDELINES, BUT AGREED TO FIND ALTERNATIVE LANGUAGE THAT WOULD PERMIT REMOVAL OF WORD "TRY," AS LONG AS STATEMENT RETAINED IDEA THAT GUIDELINES ARE RECOMMENDATIONS -- VOLUNTARY AND NOT ENFORCEABLE.

(B) MUCH ADO WAS MADE BY BRITISH AND SWISS, SUPPORTED BY U.S., THAT PARA 9, THE "NON-DISCRIMINATORY" SENTENCE, WAS NOT CLEAR ENOUGH AND SHOULD BE STRENGTHENED. IT WAS AGREED THAT CHANGE WOULD BE MADE TO SOMETHING LIKE "THE GUIDELINES ARE NOT AIMED AT INTRODUCING DIFFERENCES

OF TREATMENT BETWEEN MULTINATIONAL AND DOMESTIC ENTERPRISES IN SO FAR AS THEY ARE RELEVANT TO ALL ENTERPRISES. THEY REPRESENT, WHERE RELEVANT, GOOD PRACTICE FOR ALL."

(C) QUESTION AROSE AS TO HOW ARBITRATION PARAGRAPH IN FOOTNOTE ON LAST PAGE OF PREAMBLE RELATED TO CONSULTATIONS IN THE GUIDELINES. SWEDEN BELIEVED IT SHOULD BE FOLDED IN, BUT WAS NOT SUPPORTED; IT WAS AGREED THAT ARBITRATION PARAGRAPH SHOULD BE INCLUDED, BUT SEPARATE FROM CONSULTATION PARAGRAPH. ALSO AGREED THAT PARAGRAPH SHOULD BE REDRAFTED FOR CLARITY, AND THAT LIMITED OFFICIAL USE

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ARBITRATION REFERRED TO WAS NOT LIMITED TO ICSID BUT RATHER, AS U.S. DEL NOTED, ALL ARRANGEMENTS MUTUALLY AGREED UPON, INCLUDING ICC AND OTHER ARBITRAL BODIES.

(D) IN "HAVING REGARD" BRIDGE PARAGRAPH, CANADA QUESTIONED WHETHER STATES HAVE A "DUTY" TO TREAT MNE'S EQUITABLY, AND SOUGHT TO DELETE THE WORD. ALL DELEGATIONS OTHER THAN SWEDEN COULD ACCEPT COMPROMISE LANGUAGE, LEAVING IN WORD "DUTY" AS REGARDS OBLIGATIONS UNDER INTERNATIONAL LAW AND TREATIES, BUT MERELY STATING THAT STATES WOULD TREAT MNE'S EQUITABLY. HOWEVER, IN VIEW OF SWEDISH RESERVATION ON ENTIRE PARAGRAPH, U.S. STUCK TO ORIGINAL LANGUAGE OF SECRETARIAT DRAFT. SWEDES, SUPPORTED BY NORWAY, STATED THAT THEY WERE SCEPTICAL (LATER CHANGED TO "NEGATIVE") ABOUT THIS PARAGRAPH. THEY STATED THAT IT SEEMED TO BE OUT OF CONTEXT AND THAT THERE WAS NO REASON TO GIVE SUCH PROMINENCE TO ITS SUBSTANCE, WHICH IS ALREADY COVERED BY PARA 7 OF PREAMBLE AND NON-DISCRIMINATION PARAGRAPH. (SWEDES LATER TELEPHONED TO STOCKHOLM, WHICH REAFFIRMED REFUSAL TO ACCEPT PARAGRAPH.)

4. U.S. DEL NOTED THAT "HAVING REGARD" PARAGRAPH IS ALREADY MUCH PARED-DOWN VERSION OF WHAT WE STARTED WITH AND REPRESENTS ROCK-BOTTOM OF WHAT U.S. CAN ACCEPT IN LIGHT OF WHAT SECRETARY KISSINGER EXPRESSED IN UN SPECIAL SESSION AND MONTREAL SPEECHES, AS FUNDAMENTAL U.S. POLICY, I.E. THAT ANY CODE FOR MNE'S WAS POSSIBLE ONLY WITHIN CONTEXT OF GUIDELINES FOR GOVERNMENTS. IN FACT, U.S. CAN ACCEPT THIS PARAGRAPH AS IS ONLY BECAUSE IT IS TIED IN WITH NATIONAL TREATMENT DOCUMENT, AND THAT WITHOUT BALANCE PROVIDED BY THIS PARAGRAPH, GUIDELINES FOR MNE'S NOT ACCEPTABLE. U.S. VIEW SUPPORTED BY SWISS, NETHERLANDS, U.K. AND FRG, WITH LATTER MAKING POINT THAT FOR FRG TO MAINTAIN THE POSITION ON CODES OF CONDUCT THAT IT TOOK AT MEETING OF UN COMMISSION ON TNC'S, THERE MUST BE REFERENCE TO OBLIGATIONS OF GOVERNMENTS IN OECD GUIDELINES.

5. GENERAL POLICIES: LIMITED DISCUSSION PRODUCED SOME
OPTIONS FOR CHANGE, MANY OF WHICH WERE ADOPTED IN DRAFT-
ING GROUP AND ALL OF WHICH WERE FAVORABLE TO U.S.
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6. DISCLOSURE OF INFORMATION: THE DISCUSSION CENTERED
AROUND THREE MAJOR PROPOSALS:

(A) SIMPLE PROVISION INDICATING THAT THE MNC SHOULD
PROVIDE SUFFICIENT INFORMATION TO IMPROVE PUBLIC UNDER-
STANDING OF ITS OPERATIONS, BUT SPELLING OUT ONLY ONE
PARTICULAR REGARDING THE BASIC STRUCTURE OF THE FIRM;

(B) A MUCH MORE DETAILED DISCLOSURE PROVISION
INCLUDING SUCH CONTROVERSIAL ITEMS AS ALL CONTRACTUAL
LINKS BETWEEN PARENT AND AFFILIATE, COUNTRY-BY-COUNTRY
BREAKDOWNS ON CAPITAL INVESTMENT, EMPLOYMENT AND
REMUNERATION, AND FINANCIAL RESULTS;

(C) A U.S. COMPROMISE PROPOSAL WHICH ADDED CERTAIN
PROVISIONS OF (B) TO (A) FOR THE ENTERPRISE AS A WHOLE,
BUT DID NOT INCLUDE GEOGRAPHICAL DISAGGREGATIONS OR THE
EXPOSITION OF CONTRACTURAL LINKS.

DELEGATIONS FROM ITALY, JAPAN AND SWITZERLAND INDI-
CATED SUPPORT FOR ALTERNATIVE (A), WHEREAS CHIEFLY
SWEDEN, BELGIUM, FRG AND THE NETHERLANDS INDICATED
SUPPORT FOR ALTERNATIVE (B). AFTER SOME DISCUSSION, THE

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CHAIR DECLARED THAT THE COMMITTEE SEEMED TO BE MOVING TOWARD A JOINT U.S.-U.K. COMPROMISE WHICH ESSENTIALLY WAS THE U.S. COMPROMISE BUT WITH INFORMATION ADDED AS TO THE GEOGRAPHICAL AND TEMPORAL PATTERN OF CAPITAL INVESTMENT AND A GEOGRAPHICAL BREAKDOWN OF THE AVERAGE (AS OPPOSED TO TOTAL) NUMBER OF EMPLOYEES AND THEIR TOTAL REMUNERATION. U.S. REITERATED OPPOSITION TO ANY GEOGRAPHICAL BREAKDOWN. NETHERLANDS, BELGIUM AND FRG INDICATED THAT THEY STRONGLY OPPOSED THE GEOGRAPHICAL BREAKDOWN OF DATA ON EMPLOYMENT AND REMUNERATION ON THE GROUNDS THAT IT WOULD INVITE COUNTER-PRODUCTIVE COMPARISONS. U.K. DID NOT SPECIFY WHAT LEVEL OF DIS-AGGREGATION WAS IMPLIED BY ITS REQUEST FOR A "GEOGRAPHICAL SPLIT" ON INVESTMENT DATA.

7. FINANCING: THE FINANCING SECTION EVOKED ESSENTIALLY NO DEBATE OTHER THAN A REQUEST BY THE SWISS TO DEFINE MORE ACCURATELY OR EMPIRICALLY THE TERM "MORE LIQUID FOREIGN ASSETS."

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8. RESTRICTIVE BUSINESS PRACTICES: THE MOST SUBSTANTIVE AND CONTROVERSIAL DISCUSSIONS CONCERNED THE ISSUES RAISED BY THE SWISS AND U.S. DELEGATIONS. SWITZERLAND REPEATED ITS STANCE THAT PROVISION (3) WAS CONTRARY TO CURRENT SWISS LAW PARTICULARLY AS IT PERTAINED TO "WHOLLY-OWNED SUBSIDIARIES." THEY THUS OFFERED A COMPROMISE POSITION WHICH WAS THAT THEY WOULD ACCEPT THE WHOLE SECTION ON RBP IF "WHOLLY-OWNED SUBSIDIARIES" WAS STRUCK FROM PROVISION (3). THE U.S. DELEGATION EXPRESSED STRONG RESERVATIONS ABOUT THE ENTIRE LEGALISTIC TONE OF THE SECTION AS WELL AS THE EXAMPLES (A-D IN PARA (1), AND THE INFORMATION DISCLOSURE PROVISIONS OF

PARA (5). THE CHAIR, HOWEVER, RULED THAT SINCE THIS PROVISION HAD TWICE BEEN PASSED VIRTUALLY UNANIMOUSLY BY THE RELEVANT GROUP OF EXPERTS THAT NO DRAFTING CHANGES WOULD BE CONSIDERED UNTIL AFTER THE MEETING WITH THE BIAC AND TUAC REPRESENTATIVES. DRAFTING GROUP CHAIRMAN VOGELAAR SUBSEQUENTLY AGREED WITH U.S. DEL, HOWEVER, TO ATTEMPT DRAFTING A SIMPLIFICATION OF RBP SECTION IN DRAFTING GROUP.

9. TAXATION: THE ONLY MAJOR DISCUSSION CENTERED AROUND THE U.S. PROPOSAL TO CHANGE "PRINCIPLES" TO "PROVISIONS" IN PARA (2), WHICH APPARENTLY WILL BE ADOPTED. THE CANADIAN DELEGATION ALSO PROPOSED THAT TRANSFER PRICING BE SPECIFICALLY MENTIONED IN PARA (2) EVEN THOUGH IT COULD BE LOGICALLY ASSUMED AS PART OF (1).

10. EMPLOYMENT AND INDUSTRIAL RELATIONS: THE MAJOR CONTROVERSIES AND DISCUSSIONS CENTERED AROUND PARAS (7) AND (8). THE U.S. DELEGATION OBJECTED TO PARA (7) BOTH BECAUSE OF ITS VAGUENESS AND OBVIOUS IMPRACTICALITY. FRG AND CANADA STRONGLY SUPPORTED THE U.S. POSITION, WITH FRG INDICATING THAT PROVISION WOULD GIVE A BIAS TO TRADE UNIONS IN COLLECTIVE BARGAINING. OTHER DELEGATIONS INDICATED THEY COULD NOT TAKE A STAND ON (7) BECAUSE THEY DIDN'T KNOW WHAT IT ACTUALLY MEANT. AS FOR (8), THE QUESTION WAS REPEATEDLY RAISED AS TO WHETHER THIS IMPLIED CO-DETERMINATION. IF IT DID, DELEGATIONS SUCH AS JAPAN AND SWITZERLAND WOULD OPPOSE IT. HOWEVER, LIMITED OFFICIAL USE

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THE SECRETARIAT EXPLAINED THAT IT DID NOT IMPLY CO-DETERMINATION, BUT RATHER SOUGHT TO INSURE LABOR-MANAGEMENT DISCUSSIONS AT THE "RELEVANT" LEVEL. U.S. DEL PROPOSED CHANGING GENERAL STANDARD FOR MNE LABOR PRACTICES FROM "GOOD" EMPLOYERS TO AT LEAST AS FAVORABLE OR "COMPARABLE" LOCAL EMPLOYERS. U.S. AND DUTCH PROPOSED CHAPEAU FOR WHOLE EMPLOYMENT CHAPTER, PLACING IT IN CONTEXT OF LOCAL LAW REGULATION AND LABOR PRACTICE.

11. TECHNOLOGY: ESSENTIALLY THIS SECTION GENERATED VERY LITTLE CONTROVERSY, WITH THE EXCEPTION THAT SOME DELEGATIONS WANT TO DELETE THE QUALIFYING PHRASE "AS FAR AS APPROPRIATE" IN PARA (1) AS BEING TOO WEAKENING. NO RESOLUTION WAS REACHED ON THIS ISSUE. THE BELGIAN DELEGATION SUGGESTED THE DELETION OF "NEW" IN PARA (2) BECAUSE LDC'S PARTICULARLY MIGHT BE MOST IN NEED OF "OLD" TECHNOLOGY. THE U.S. DELEGATION SUGGESTED A REDRAFTING OF PARA (3) BECAUSE IT IS CURRENTLY A DIRECT QUOTE FROM THE ICC GUIDELINES.

12. POLITICAL INVOLVEMENT: THE CHAIR STATED ITS PREFERENCE FOR A GENERAL DISCUSSION OF THE DESIRABILITY OF SUCH A PROVISION AS OPPOSED TO A DEBATE ON THE EXACT WORDING. IN THIS REGARD, THE CHAIR NOTED THERE WERE

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THREE TYPES OF ACTIVITIES THAT SHOULD BE EXAMINED: (A) BRIBERY OR ILLICIT PAYMENTS; (B) POLITICAL PAYMENTS OR CONTRIBUTIONS; AND (C) POLITICAL ACTIVITY. THE CHAIR FURTHER INDICATED ITS STRONG PREFERENCE FOR DISCUSSING ONLY THE LATTER TWO. AS FOR BRIBERY, IT FELT IT WAS "RIDICULOUS" AND/OR COUNTER-PRODUCTIVE TO HAVE A PROVISION ON BRIBERY BECAUSE: (A) IT WAS ALREADY ILLEGAL, AND TO SUGGEST NOT DOING IT WOULD BE DEMEANING OF MNE'S; (B) IT IMPLICITLY INDICATES THAT MNE'S ARE MORE LIKELY TO COMMIT BRIBERY THAN DOMESTIC FIRMS, WHICH IS UNTENABLE. THE CHAIR'S APPROACH WAS STRONGLY SUPPORTED BY FRG, U.K., CANADA, JAPAN, SWITZERLAND, SWEDEN AND OTHERS. AS A RESULT, THE CHAIR HAS REQUESTED

THE DRAFTING GROUP TO PROPOSE "LANGUAGE" ON POLITICAL CONTRIBUTIONS AND POLITICAL ACTIVITY, BUT WITH NO COMMITMENT TO INCLUDE SUCH A SECTION IN THE CODE. U.S. DELEGATION SUBMITTED FOLLOWING TEXT TO IME:

"ENTERPRISES SHOULD NOT MAKE, NOR SHOULD THEY BE LIMITED OFFICIAL USE

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SOLICITED TO MAKE, PAYMENTS IN MONEY OR ANY OTHER FORM OF CONSIDERATION, TO HOST GOVERNMENT OFFICIALS (OTHER THAN FOR MANIFEST PUBLIC PURPOSES) OR CONTRIBUTIONS, IN THE FORM OF MONEY OR ANY OTHER FORM OF CONSIDERATION, TO POLITICAL PARTIES, UNLESS SUCH CONTRIBUTIONS ARE LAWFUL AND DETAILS OF THE AMOUNTS AND THE BENEFICIARIES ARE DISCLOSED."

FURTHER INFORMAL CONTACTS BY THE U.S. DELEGATION REVEALED VERY LITTLE SYMPATHY FOR POLITICAL INVOLVEMENT/ BRIBERY SECTION, WHICH IS EVIDENCED BY BOTH SWEDEN AND THE U.K. WITHDRAWING THEIR ORIGINAL PROPOSALS. AT CHAIRMAN'S LUNCHEON FOR MAJOR DELEGATIONS, IT WAS AGREED THAT OECD WOULD CONTINUE TO BE OF BRIBERY ISSUE, (OTHER THAN FOR MANIFEST PUBLIC PURPOSES) OR CONTRIBUTIONS, IN THE FORM OF MONEY OR ANY OTHER FORM OF CONSIDERATION, TO POLITICAL PARTIES, UNLESS SUCH CONTRIBUTIONS ARE LAWFUL AND DETAILS OF THE AMOUNTS AND THE BENEFICIARIES ARE DISCLOSED."

FURTHER INFORMAL CONTACTS BY THE U.S. DELEGATION REVEALED VERY LITTLE SYMPATHY FOR POLITICAL INVOLVEMENT/ BRIBERY SECTION, WHICH IS EVIDENCED BY BOTH SWEDEN AND THE U.K. WITHDRAWING THEIR ORIGINAL PROPOSALS. AT CHAIRMAN'S LUNCHEON FOR MAJOR DELEGATIONS, IT WAS AGREED THAT OECD WOULD CONTINUE TO BE SEIZED OF BRIBERY ISSUE, FOR POSSIBLE LATER CONSIDERATION IN CONNECTION WITH NORTH/SOUTH INVESTMENT GUIDELINES OR POSSIBLE XCSS DISCUSSION.

13. CONSULTATIONS: INTERGOVERNMENTAL CONSULTATIONS PROCEDURES (IME(75)12) WAS HOTLY DEBATED. WHILE RECOGNIZING THAT THE GUIDELINES CANNOT BE MANDATORY, SWEDEN AGAIN PRESSED FOR A PROCEDURE TO TAKE UP INDIVIDUAL CASES WITH MNE PARTICIPATION. THE U.K. URGED MNE PARTICIPATION TO "CLARIFY AND EXPLAIN APPLICATION OF THE GUIDELINES" NOT ONLY TO HOST COUNTRY MNE BUT TO THE HOME COUNTRY HEAD OFFICE OF THE MNE. FRANCE, SWITZERLAND, CANADA, GERMANY AND THE U.S. OBJECTED TO BOTH THESE NOTIONS. WHILE AGREEING THAT THE OECD CANNOT, AND SHOULD NOT, HAVE LIMITED OFFICIAL USE

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A "TRIBUNAL" POWER, DEPUTY SECRETARY-GENERAL ELDIN SUGGESTED THE SECRETARIAT BE GIVEN THE AUTHORITY TO RAISE ISSUES TO THE IME ON BEHALF OF BIAC AND/OR TUAC. U.S. AND CANADA OBJECTED' AND NEITHER ELDIN, SWEDEN OR THE U.K. RECEIVED SUPPORT FROM OTHER DELEGATIONS. GERMANY SUGGESTED MERGING PARAS 1 AND 3 OF REFDOC (B) DRAFT OUTLINE TO READ "CARRY OUT REVIEWS" RATHER THAN "GENERAL REVIEWS" AND THUS ALLOW SPECIFIC ISSUES, ALBEIT NOT SPECIFIC CASES. THE U.S. DEL SUGGESTED THE FOLLOWING PROVISIONS:

A. A REVIEW OF THE EXPERIENCE OF MEMBER COUNTRIES WITH THE GUIDELINES SHALL BE PERIODICALLY CARRIED OUT BY THE COMMITTEE.

B. MEMBER COUNTRIES MAY, AT ANY TIME, REPORT TO THE COMMITTEE GENERAL ISSUES WHICH ARISE FROM EXPERIENCE WITH THE GUIDELINES.

C. WHEN MULTINATIONAL ENTERPRISES ARE MADE SUBJECT TO CONFLICTING LAWS, REGULATIONS OR POLICIES BY MEMBER COUNTRIES, OR WHEN THE INTERESTS OF MEMBER COUNTRIES ARE SUBSTANTIALLY AFFECTED BY OTHER MEMBER COUNTRIES' LAWS, REGULATIONS OR POLICIES DIRECTLY INFLUENCING THE ACTIVITIES OF MULTINATIONAL COMPANIES, THE GOVERNMENTS CONCERNED SHOULD COOPERATE IN GOOD FAITH TO RESOLVE SUCH PROBLEMS EITHER WITHIN THE COMMITTEE OR THROUGH OTHER MUTUALLY ACCEPTABLE ARRANGEMENTS.

THE CHAIRMAN THEN REFERRED THIS MATTER TO THE DRAFTING GROUP.

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14. CONSULTATIONS WITH BIAC AND TUAC: DEPUTY SECRETARY-GENERAL ELDIN ADVISED THE COMMITTEE THAT BIAC AND TUAC WOULD LIKE TO REVIEW THE NEXT GUIDELINE DRAFT AND PRESENT ITS VIEWS TO THE FULL COMMITTEE AT ITS NEXT MEETING. U.S. DEL SUGGESTED THAT ONLY THE CHAIRMAN MEET WITH BIAC AND TUAC, BUT SWEDEN ASKED FOR PARTICIPATION BY ANY DELEGATIONS WISHING TO DO SO. THIS WAS ACCEPTED WITH THE PROVISION THAT IT WOULD NOT BE A NEGOTIATING EVENT BUT RATHER TO RECEIVE BIAC AND TUAC VIEWS. THE MEETING IS TO TAKE PLACE ON NOV. 18, THE AFTERNOON BEFORE THE NEXT IME MEETING.

15. INCENTIVES/DISINCENTIVES: IME WAS ABLE TO DISPENSE WITH INCENTIVES/DISINCENTIVES ISSUES WITH RELATIVELY BRIEF DISCUSSION. TEXT OF REFDOC (C) SERVED AS BASIS OF DISCUSSION. U.S. DEL SUMMARIZED SITUATION BY STATING THAT PARAS. (1) AND (2) SHOULD REMAIN AS NOBLE DECLARATIONS OF PRINCIPLE REGARDING LIMITED OFFICIAL USE

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OFFICIAL INCENTIVES/DISINCENTIVES FOR DIRECT INVESTMENT AND REMINDER OF FACT THAT THE MEMBER COUNTRIES SHOULD TAKE INTO ACCOUNT INTERNATIONAL EFFECTS OF SUCH MEASURES. THEN, PARA (3) SHOULD NARROW SCOPE OF NOTIFICATION (AND CONSULTATIONS) PROCEDURE TO INCLUDE ANY MEASURES ON FOREIGN DIRECT INVESTMENT. THIS NARROWED SCOPE WOULD MAKE UNNECESSARY SUCH REFINEMENTS AS IN LAST SENTENCE OF PARA (3) (RE:MACRO-ECONOMIC MEASURES) AND WOULD ALSO TAKE INTO ACCOUNT CAUTIONS VOICED BY IRELAND, ITALY AND FRANCE IN REQUESTING EXCLUSION OF REGIONAL POLICIES IN ANY CONSULTATION PROCEDURE. FRG SUGGESTED A CHANGE TO PARA (6)

REGARDING FREE PROVISION OF INFORMATION AT CONSULTATIONS UNLESS LEGAL OR CONTRACTUAL OBLIGATIONS PROHIBITED IT. FRANCE SUPPORTED THIS FRG AMENDMENT. U.S. DEL SUGGESTED NEW VERSION OF PARA (4) SHOULD BE DRAFTED WHICH WOULD REFLECT MORE CLEARLY WHAT IS MEANT BY INCENTIVES/DISINCENTIVES. U.S. DEL ALSO VOICED SUPPORT FOR SOME APPROPRIATE VERSION OF PARA (8) REGARDING GENERAL EXAMINATIONS OF EXPERIENCE WITH APPLICATION OF INSTRUMENT. CHAIRMAN STEEG SUGGESTED THAT THE INSTRUMENT DEAL WITH GENERAL POLICIES (RATHER THAN GET INTO PROBLEM OF EXCEPTIONS). STEEG SUGGESTED BROAD CONSENSUS ON SUBSTANCE OF U.S. DRAFT AND ASKED DRAFTING GROUP TO COMPLETE TEXT ALONG LINES SUGGESTED BY U.S. DEL WITH ANY AGREED REFINEMENTS.

16. NATIONAL TREATMENT: U.S. CIRCULATED REVISED TEXT OF NATIONAL TREATMENT INSTRUMENT. DISCUSSION CENTERED ON REFDOC (D), REGARDING QUESTION OF STATEMENT OF PRINCIPLE RE NATIONAL TREATMENT (PARA (1)) AND DESCRIPTION OF ANY EXCEPTIONS PROCEDURE (PARA (8)). U.S. DEL INDICATED THAT OPENING PARAGRAPH SHOULD HAVE STRONG STATEMENT AS TO SUBSTANCE AND MEANING OF UNDERTAKING RE NATIONAL TREATMENT, INCLUDING PUTTING SINGLE DEFINITION OF NATIONAL TREATMENT IN THE PARAGRAPH. U.S. DEL CALLED PARA (8) KEY PART OF THIS INSTRUMENT, SINCE IT REPRESENTS A DISCIPLINE OR CONSTRAINT IN EXCEPTIONS UNDER THE NATIONAL TREATMENT PRINCIPLE. U.S. DEL REMINDED IME THAT IT IS NECESSARY TO DISTINGUISH TWO CLASSES OF EXCEPTIONS: (A) THOSE LIMITED OFFICIAL USE

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EXCEPTED BY INTERNATIONAL TREATIES AND OBLIGATIONS (I.E., NATIONAL SECURITY CONSIDERATIONS AS IN PARA (4)) AND (B), THOSE WHICH WOULD BE INVOLVED IN AN INJURY TEST, OR THROUGH PRIOR NOTIFICATION AND JUSTIFICATION (PARA (8)). AUSTRALIA, SWEDEN AND FRANCE INDICATED THEY COULD LIVE ONLY WITH PARA 8(A) FORMULATION, WHICH PROFFERS FREE MODIFICATION OF EXCEPTIONS BY MEMBER COUNTRIES. FRG INDICATED THAT ALTHOUGH IT SAW NEED FOR AN EVOLUTIONARY PROCESS IN INSTRUMENT, IT COULD ACCEPT 8(A) ENVISIONING A MOVEMENT TOWARDS 8(B) FORMULATION IN THE FUTURE. U.S. DEL POINTED OUT THAT 8(A) FORMULATION MAY NOT BE USELESS, BUT ALSO HARMFUL IN LIGHT OF STRONGER FCN TREATIES WHICH U.S. HAS WITH SOME OECD COUNTRIES. CHAIRMAN AND U.S. STRESSED STRONGLY THAT SUCCESS OF OECD INVESTMENT GUIDELINES CLEARLY BRINGS ON MEANINGFUL NATIONAL TREATMENT GUIDELINE. STEEG DECIDED TO REVERT MATTER TO DRAFTING GROUP, WHERE A NEW TEXT WILL BE DRAFTED WITH TWO OR THREE ALTERNATIVES

TO PARA (8) REFLECTING VARIOUS POSSIBILITIES FOR
EXCEPTIONS CLAUSE, I.E. (A) GENERAL EXCEPTIONS FREELY
ALTERED, (B) AN INJURY AND JUSTIFICATION TEST OR (C)
PRIOR NOTIFICATION AND JUSTIFICATION. THESE ALTERNA-
TIVES WILL THEN BE DISCUSSED AT NEXT IME MEETING ALONG

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WITH NEW DRAFT TEXT OF REMAINDER OF INSTRUMENT.

17. DRAFTING GROUP MEETING OCTOBER 2-3: DRAFTING
GROUP BEGAN DISCUSSION OF GUIDELINES BY SECRETARIAT
RAISING QUESTIONS OF WHAT WORD SHOULD REPLACE
"INTRODUCTION". NO CONCLUSION WAS REACHED.

18. PREAMBLE: UP TO PARAGRAPH 5, ONLY SMALL NUMBER
OF VERY MINOR AMENDMENTS MADE. PARAS 6, 8 AND 9
SUBSTANTIALLY CHANGED TO MEET U.S. PROPOSALS AND
STRENGTHEN TEXT REGARDING VOLUNTARY, NON-ENFORCEABLE
NATURE OF GUIDELINES, AS WELL AS THEIR NON-

DISCRIMINATORY NATURE. LATTER PARAGRAPH NOW READS:
QUOTE THE GUIDELINES ARE NOT AIMED AT INTRODUCING
DIFFERENCES OF TREATMENT BETWEEN MULTINATIONAL AND
DOMESTIC ENTERPRISES. THEY REFLECT, WHERE RELEVANT,
GOOD PRACTICE FOR ALL. END QUOTE.

19. CONSULTATIONS: GENERAL AGREEMENT REACHED ON
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CONSULTATIONS LANGUAGE. THE COMMITTEE MAY REVIEW
THE EXPERIENCE OF COUNTRIES WITH THE GUIDELINES AND
EXCHANGE VIEWS, OR RAISE QUESTIONS OF INTERPRETATION,
BUT THE BEHAVIOR OF SPECIFIC ENTERPRISES MAY BE
REFERRED TO ONLY TO ILLUSTRATE AN ISSUE, AND THE
REVIEWS SPECIFICALLY SHALL NOT RESULT IN CONCLUSIONS
BEING PASSED ON THE BEHAVIOR OF SPECIFIC ENTERPRISES.
CONSULTATIONS ON PROBLEMS RAISED BY STATES SUBJECTED
ENTERPRISES TO CONFLICTING REQUIREMENTS WILL ALSO BE
COVERED.

20. "HAVING REGARD" PARAGRAPH: SWEDEN RETREATED
SOMEWHAT FROM POSITION TAKEN IN IME PLENARY BY
INDICATING IT COULD ACCEPT PLACING REFERENCES TO
EQUITABLE TREATMENT, INTERNATIONAL LAW AND TREATIES
IN PARAGRAPH JUST BEFORE PARAGRAPH WHICH BRIDGES
INTRODUCTION AND GUIDELINES. U.S. DEL AND OTHERS
AGAIN INDICATED CRUCIAL ASPECT OF PLACING THESE
REFERENCES IN PROMINENT POSITION, AND NO EFFORT WAS
MADE TO DEBATE ISSUE IN DRAFTING GROUP.

21. GENERAL POLICIES: NEW TEXT REPRESENTS ADVANCE
FOR U.S. POSITION, ESPECIALLY IN PARA 3 WHICH NOW ASKS
"REASONABLE ASSISTANCE TO THEIR COMPONENT ENTITIES TO
FACILITATE THEIR COMPLIANCE" ETC.

22. POLITICAL ACTIVITIES: DESPITE NEGATIVE TENOR OF
IME DISCUSSION, DRAFTING GROUP REACHED FULL AGREEMENT
ON THE FOLLOWING TEXT RELATING TO POLITICAL CONTRIBU-
TIONS, BRIBERY AND POLITICAL ACTIVITY: QUOTE
ENTERPRISES SHOULD, WITHIN THE FRAMEWORK OF THE
HOST COUNTRY'S LAWS AND REGULATIONS, OBSERVE
THE BEST STANDARDS SET BY LOCAL CUSTOMS AND
PRACTICES WITH REGARD TO:

- (1) RENDERING GIFTS OR BENEFITS TO PUBLIC
SERVANTS
- (2) CONTRIBUTIONS TO POLITICAL PARTIES AND
OTHER POLITICAL ORGANIZATIONS
- (3) INVOLVEMENT IN LOCAL POLITICAL ACTIVITIES.

END QUOTE

THIS LANGUAGE WILL FORM A NEW PARAGRAPH 6 IN THE

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23. DISCLOSURE OF INFORMATION: SECRETARIAT
CIRCULATED A NEW DRAFT TEXT WHICH REPRESENTED MOVEMENT
TOWARDS US POSITION, BUT DUE TO LACK OF TIME FOR
DISCUSSION, FULL BREAKTHROUGH BASED ON UK-US AGREEMENT
DID NOT DEVELOP. ISSUES DISCUSSED HERE WERE
AGAIN THE ROLE OF BUSINESS CONFIDENTIALITY,
GEOGRAPHIC BREAKDOWN OF INFORMATION, RELATIONSHIP
OF GUIDELINES ON INFORMATION TO LOCAL LAW, I.E.
SHOULD THE INFORMATION COVERED IN THE SECTION BE
PUBLISHED BY AN MNE ONLY WHEN THE HOST STATE ALREADY
HAS SOME PUBLICATION REQUIREMENT, OR EVEN IN THE
ABSENCE OF ANY SUCH REQUIREMENTS. SECRETARIAT HELD
TO FORMER VIEW QUITE INSISTENTLY, WHILE MANY
OTHER COUNTRIES HELD TO LATTER POINT OF VIEW. US
DEL INDICATED SYMPATHY WITH SECRETARIAT VIEW AND STATED
THAT OTHER POSITION WOULD BE POSSIBLE ONLY IF THERE
WERE STRONGLY WORDED BUSINESS CONFIDENTIALITY LANGUAGE,
ELSE THE RESULTS COULD BE DISCRIMINATORY
TREATMENT IF MNE COMPARED WITH LOCAL ENTERPRISE
WHO WOULD NOT BE REQUIRED BY LAW TO PUBLISH EVERYTHING.
SWEDES STILL BALKING ON BUSINESS CONFIDENTIALITY
LANGUAGE IN THIS PROVISION, EVEN THOUGH ACCEPTING SOME

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FORM OF IT IN SECTION ON INFORMATION TO GOVERNMENTS.
EXCEPT FOR SWEDEN, THERE WAS AGREEMENT ON THE
MAINTENANCE OF THE BUSINESS CONFIDENTIALITY LANGUAGE.

24. WHERE NEW SECRETARIAT TEXT REFERS TO GEOGRAPHIC
BREAKDOWN, IT CALLS FOR IT QUOTE BY COUNTRY OR MAIN
GEOGRAPHICAL AREA END QUOTE SECRETARIAT'S INTERPRETATION
IS THAT THE ENTERPRISE IS COMPLETELY FREE TO CHOOSE
THE BREAKDOWN PRESENTED. SOME OTHER DELEGATIONS
(FRG, SWEDEN) THOUGHT THAT FIRST CHOICE SHOULD BE
THAT OF COUNTRY BREAKDOWN. US DEL INDICATED HIS
STRONG RESERVATIONS AS THOSE PROVISIONS OF SECTION
WHICH CONTAIN GEOGRAPHICAL BREAKDOWN. HOWEVER, THERE
WAS NO TIME FOR ANY DELEGATION TO GO INTO PROVISIONS
IN DETAIL. REFERENCE TO CONTRACTUAL OR FINANCIAL
LINKS IN FIRST PROVISION OF OPTION B WAS DELETED
AFTER US INTERVENTION, SUPPORTED BY UK.

25. AFTERNOON OF SECOND DAY OF DRAAFTING GROUP CENTERED
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ON PREPARING A TEXT (ENTIRELY WITHOUT BRACKETS) FOR
PRESENTATION TO BIAC AND TUAC, SO ONLY VERY CURSORY
TOUR D'TABLE OCCURRED ON EMPLOYMENT AND INDUSTRIAL
RELATIONS, RESTRICTIVE BUSINESS PRACTICES, FINANCING,
AND SOME ASPECTS OF DISCLOSURE OF INFORMATION. WHERE
UNANIMOUS AGREEMENT COULD NOT BE FOUND ON TEXTS IN
THESE AREAS PREPARED BY VARIOUS DELEGATIONS OR THE
REFDOC (A) FOR THE PURPOSE OF GIVING A TEXT TO BIAC
AND TUAC. IN THE EMPLOYMENT SECTION, ONLY PARA (1)
AND (8) WILL BE DIFFERENT FROM IME75)15. THE REMAINDER
OF THE SECTION, PARA 1 BECAUSE OF GENERAL AGREEMENT ON
NEW LANGUAGE AND PARA 8 WHERE SECRETARIAT CLARIFIED
ITS THINKING ON SUBJECT, EVEN THOUGHT TEXT NOT
SATISFACTORY TO ALL DELEGATIONS, INCLUDING US, IS
ONLY MINUTELY CHANGED, WITH RESERVATIONS OF ALL DELS
PRESERVED, FOR PRESENTATION TO BIAC AND TUAC. US

GAVE SECRETARIAT AND UK COPY OF DEPARTMENT OF LABOR GUIDELINES, BUT THERE WAS NOT TIME TO GO INTO THEM. BOTH UK AND US REQUESTED THAT ADEQUATE TIME BE SET ASIDE IN NEAR FUTURE TO GO OVER LABOR SECTION. THE TAXATION AND TECHNOLOGY SECTIONS WERE NOT COVERED, AND REMAIN SUBJECT TO CHANGE BY THE COMMITTEE ON FISCAL AFFAIRS AND THE SCIENCE AND TECHNOLOGY COMMITTEE, WHICH WILL BOTH MEET BEFORE THE END OF OCTOBER 1975. A COVER NOTE PREPARED BY SECRETARIAT WILL PRESENT THE DOCUMENT TO BIAC AND TUAC, AND WILL OUTLINE THE STATE OF NEGOTIATIONS IN WHICH THE GUIDELINES SHOULD BE CONSIDERED.

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